IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3341/07
Suga & Ors. Vs. Bheru & Anr.

24.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Gaurav Gupta for petitioners.
Shri Pradeep Kalwania for respondents.

Heard learned counsel for the parties.

The petitioners have challenged the order dated 7.7.2006 whereby their written statement was closed and the order dated 9.2.2007, whereby their application filed u/s. 114 CPC and Order 41 read with Section 151 CPC to accept their written statements on record, was rejected.

Learned counsel for the

petitioners argued that the plaintiff-non-petitioner filed a suit for permanent injunction against the defendants-petitioners seeking a direction upon them not to enter the disputed property which he claimed to be his own and also not to raise any construction on it. Upon service of notice petitioners entered appearance through their advocate on 23.5.2006. The date which was lastly fixed for filing of the written statement was 2nd June, 2006 whereas the written statement could be filed with one day delay on 3rd June, 2006 because one of the defendant-petitioners Bheru was not available in town on 2nd June, 2006 and his signatures could not be obtained. The written statement was filed along with the application under Section 114 and 151

CPC read with Order 41 CPC whereby the appeal was made to the Court to review the order dated 7.7.06 on which date the written statement of the defendants was closed. It was argued that the Court had the power to review this order passed on 7.7.2006 who also in exercise of its powers under Section 151 accept the written statement on record.

Learned counsel for the respondents opposed the writ petition on the premise that provisions contained in Order 8 Rule 1 CPC are mandatory in law and the defendants are required to file their written statement within thirty days from the date of service and this period could be extended by the trial court upto the period of ninety days on showing the valid reasons. Several

adjournments were granted to the petitioners, while they did not file the written statement on time. The written statement was in fact valid for ten days after expiry of period of ninety days.

Having heard the learned counsel for the petitioner and perused the material on record, I find that the provisions contained in Order 8 Rule 1 CPC although required that the written statement could be filed within ninety days of the date of service, but nevertheless the Court in appropriate cases may allow the written statement on record. In the facts of the present case when the matter was last listed on 28.4.2006 was adjourned to 2.6.2006 to enable the defendants to file written statement and written statement was filed

on 3.6.2006, issue has to be approached in the totality of circumstances. The reason that has been assigned by the defendants is that though other defendants were available but one of the defendants Bheru was not available for signing the written statement and therefore it could not be filed on 2.6.2006 but instead it was filed on 3.6.2006. This cannot be allowed to frustrate a legitimate claim and justice cannot be allowed to be defeated, when the Court has the power to extend the time limit.

Learned counsel for the respondents at this stage argued that the order passed by the learned trial court does not suffer from any error of jurisdiction and therefore is not open to

challenge.

From what has been discussed above, it is revealed that the learned trial court did not exercise the discretion properly which it ought to have exercised. That would amount to illegality in exercise of jurisdiction. In fact, this Court while issuing notice to the respondent on 18.7.2007 had directed the trial court to take the written statement on record and proceed further in accordance with this order. This order is reiteration of that order already passed.

The writ petition is accordingly allowed and the impugned orders dated 7.7.2006 and 9.2.2007 are set aside.

(Mohammad Rafiq),J.

Rs/-